IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

CRL.A.No. 546 of 2004()

AGAINST THE JUDGEMENT/ORDER IN CRLP.62/2004 Dated 21/01/2004
CC.1397/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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APPELLANT: COMPLAINANT

M/S.INDIA CEMENTS CAPITAL & FINANCE LTD.
IIND FLOOR M.K.V.BUILDING, SHENOY'S JUNCTION,
M.G.ROAD, ERNAKULAM REPRESENTED BY ITS
ASST.GENERAL MANAGER MR.WILFRED G.WILLIAMS.

BY ADV. SRI.P.T.JOSE

RESPONDENTS:

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1. NAYANESWARI CHANDRU, PROPTRIETRIX
M/S.POLYTECH COLD RE-TRADE, KARIMUGAL ROAD,
VADAYAMPATHUMALA, PUTHENCRUZ, ERNAKULAM.

2. STATE OF KERALA, REP.BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 546 of 2004

Dated this the 30th March, 2007.

J U D G M E N T

The complainant before the Judicial First Class Magistrate Court-II, Kochi, was absent, when the case was taken up on 23.12.2003. Therefore, the complaint preferred by the complainant under Section 138 of the Negotiable Instruments Act, was dismissed and the accused, first respondent herein, was acquitted. Hence, this appeal, on obtaining leave of this Court.

2. It is submitted by the appellant that the accused was absent, and non bailable warrant was issued to the first respondent. He appeared and he was released on bail. When the matter was posted for adducing evidence, the appellant could not be present due to viral fever. An application preferred to that effect was rejected, and the complaint was dismissed. Counsel, therefore, submits that an opportunity may be given to the appellant to raise his contentions.

3. I heard the arguments advanced by the learned counsel for the first respondent.

4. Considering the facts of the case, I am of the opinion that an opportunity be given to the parties so that the case could be disposed of on merit.

5. In the result, the impugned order, dated 23.12.2003, is set aside. C.C.No.1397/2001 is restored to the file of that Court.

6. The parties shall appear before the court below on 30.4.2007. The learned Magistrate shall dispose of the matter, at the earliest, and in any case, within four months from the date of appearance of the parties, as the case is of the year 2001.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.